
**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**1:20-cv-02921-SDG
Rose et al v. Raffensperger
Honorable Steven D. Grimberg**

Minute Sheet for proceedings held In Open Court on 08/03/2021.

TIME COURT COMMENCED: 3: P.M.

TIME COURT CONCLUDED: 3:42 P.M.

TIME IN COURT: 00:42

OFFICE LOCATION: Atlanta

COURT REPORTER: Alicia Bagley

DEPUTY CLERK: KJ Jones

ATTORNEY(S) PRESENT: Bryan Jacoutot representing Brad Raffensperger
Wesley Morrissette representing Brionte McCorkle
Wesley Morrissette representing James Major Woodall
Wesley Morrissette representing Richard Rose
Wesley Morrissette representing Wanda Mosley
Loree Anne Paradise representing Brad Raffensperger
Bryan Sells representing Brionte McCorkle
Bryan Sells representing James Major Woodall
Bryan Sells representing Richard Rose
Bryan Sells representing Wanda Mosley
Bryan Tyson representing Brad Raffensperger

PROCEEDING CATEGORY: Telephone Conference(Motion Hearing Non-evidentiary);

MINUTE TEXT:

Teleconference with the parties concerning Plaintiffs' request to take two identified depositions after the close of discovery. After taking the request and arguments of counsel under advisement, the Court DENIES WITHOUT PREJUDICE Plaintiffs' request. Plaintiffs are granted leave to renew their request after the Court rules on dispositive motions.

HEARING STATUS:

Hearing Concluded

From: Bryan Tyson <btyson@taylorenglish.com>
Sent: Tuesday, August 3, 2021 11:30 AM
To: Alisha Holland; Bryan Sells
Cc: Bryan Jacoutot; Loree Anne Paradise; Charlene McGowan; Nicolas Martinez; Wesley Morrissette
Subject: RE: Rose v. Raffensperger - 20-cv-2921 - request for conference

CAUTION - EXTERNAL:

Ms. Holland:

We appreciate the opportunity to respond to Plaintiffs' discovery dispute. The Secretary opposes re-opening discovery for further consideration of Mr. Johnson's appointment to the PSC because we believe (1) the Court can take judicial notice of the only relevant facts; (2) further discovery would not assist the Court in resolving the issues in this case, in part because (3) Plaintiffs did not seek to explore the appointment process from the Governor or his predecessors during discovery; and (4) re-opening discovery after summary judgment is fully briefed is not in the best interest of resolving the case.

First, the only statements made by the Secretary about Mr. Johnson's appointment are that (1) Mr. Johnson is Black and (2) was appointed to the PSC by the Governor. [Doc. 85-2, ¶ 11]. These facts are not subject to reasonable dispute because they are reasonably known in the community and can readily be determined as accurate. F.R.E. 201(b). As Plaintiffs note, these facts are relevant to their Complaint only on the grounds that they allege there has been a denial of access to the appointment process by African-American voters since 2002. [Doc. 1, ¶ 29]. While the appointment of a Black individual is a relevant fact, the facts surrounding how Mr. Johnson came to receive that appointment are not relevant and are further not known by counsel for the Secretary.

Second, deposing Mr. Johnson and the Governor's office, as Plaintiffs propose, will not assist the Court in the resolution of this case. As the Secretary has pointed out in the summary-judgment briefing, Plaintiffs chose not to sue the Governor or the members of the Public Service Commission when they brought this case. The depositions of the other members of the PSC centered on their campaigns and/or appointments and on the roles and responsibilities of the PSC itself. Deposing Mr. Johnson will not add anything to the roles and responsibilities of the PSC given his short tenure (so far). And exploring his appointment will not assist the Court in resolving the totality of the circumstances because the only relevant fact is that Mr. Johnson was appointed—and that alone demonstrates that Black Republicans at least have access to the appointment process, even if Plaintiffs continue to insist that Black Democrats do not. Also, attempting to depose the office of the Governor will also likely lead to a number of privilege-based objections that would have to be resolved by the Court given Plaintiffs' apparent desire to explore how the executive branch goes about making its decisions on executive appointments.

Third, Plaintiffs did not seek to depose the Governor's office (or the prior holders of the position of Governor) while discovery was open and Plaintiffs should not be able to re-open discovery to access an office they chose not to depose when they had the opportunity.

Finally, re-opening discovery for this issue does not address the problem that surrounds many election cases—elections keep occurring, adding new facts. And government keeps operating, with new appointments made for vacancies on a regular basis. But "discovery in this action must end at some point

and this case must move toward resolution." *Gaddy v. Terex Corp.*, No. 1:14-cv-1928-WSD, 2016 U.S. Dist. LEXIS 31087, at *7-8 (N.D. Ga. Mar. 10, 2016). Judge Jones had to deal with a similar issue in the *Fair Fight Action* case and he ultimately set a deadline for additional declarations describing voter experiences in elections held after 2018 so the case could move toward a resolution. Case No. 1:18-cv-05391-SCJ, Doc. No. 225. In this case, the parties have already finished briefing cross-motions for summary judgment and allowing additional discovery will not serve the interests of bringing this case to a resolution.

We appreciate the Court's consideration and look forward to speaking with everyone at 3:00 today.

Thanks,

Bryan

Bryan P. Tyson

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From: Alisha Holland <Alisha_Holland@gand.uscourts.gov>

Sent: Monday, August 2, 2021 5:23 PM

To: Bryan Sells <bryan@bryansellslaw.com>; Bryan Tyson <btyson@taylorenGLISH.com>

Cc: Bryan Jacoutot <bjacoutot@taylorenGLISH.com>; Loree Anne Paradise <lparadise@taylorenGLISH.com>; Charlene McGowan <CMcGowan@law.ga.gov>; Nicolas Martinez <nicolas.martinez@bartlitbeck.com>; Wesley Morrissette <wesley.morrissette@bartlitbeck.com>

Subject: RE: Rose v. Raffensperger - 20-cv-2921 - request for conference

Thank you for your responses. We have scheduled the teleconference for tomorrow, August 3 at 3:00 pm. The connection instructions are below. Please submit any statement in response to the discovery dispute by noon tomorrow.

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

Meeting ID: 160 334 2832

Passcode: 480851

Thanks,

Alisha Holland

*Courtroom Deputy Clerk to the
Honorable Steven D. Grimberg
1767 United States Courthouse
75 Ted Turner Drive, S.W.
Atlanta, GA 30303
Phone: (404) 215-1474
Alisha_Holland@gand.uscourts.gov*

From: Bryan Sells <bryan@bryansellslaw.com>
Sent: Monday, August 2, 2021 4:54 PM
To: Bryan Tyson <btyson@taylorenglish.com>
Cc: Alisha Holland <Alisha_Holland@gand.uscourts.gov>; Bryan Jacoutot <bjacoutot@taylorenglish.com>; Loree Anne Paradise <lparadise@taylorenglish.com>; Charlene McGowan <CMcGowan@law.ga.gov>; Nicolas Martinez <nicolas.martinez@bartlitbeck.com>; Wesley Morrissette <wesley.morrissette@bartlitbeck.com>
Subject: Re: Rose v. Raffensperger - 20-cv-2921 - request for conference

CAUTION - EXTERNAL:

Ms. Holland:

All of the Court's suggested times work for counsel for the plaintiffs.

BRYAN

On Mon, Aug 2, 2021 at 4:37 PM Bryan Tyson <btyson@taylorenglish.com> wrote:

Thank you, Ms. Holland. For the Defendant Secretary of State, tomorrow afternoon at 3pm or Wednesday at 10:00am work best.

Thanks,

Bryan

Bryan P. Tyson

Taylor English Duma LLP | 1600 Parkwood Circle, Suite 200, Atlanta, GA 30339
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From: Alisha Holland <Alisha_Holland@gand.uscourts.gov>
Sent: Monday, August 2, 2021 4:35 PM
To: Bryan Sells <bryan@bryansellslaw.com>; Bryan Tyson <btyson@taylorenglish.com>; Bryan Jacoutot <bjacoutot@taylorenglish.com>; Loree Anne Paradise <lparadise@taylorenglish.com>; Charlene McGowan <CMcGowan@law.ga.gov>; Nicolas Martinez <nicolas.martinez@bartlitbeck.com>; Wesley Morrissette <wesley.morrissette@bartlitbeck.com>
Subject: RE: Rose v. Raffensperger - 20-cv-2921 - request for conference

Good Afternoon,

Please let me know if the parties are available on any of the below date and times for a discovery dispute teleconference. Defendant will have an opportunity to respond to Plaintiff's statement by close of business one day prior to the scheduled teleconference or by noon tomorrow if the parties would like to have the conference tomorrow afternoon.

August 3 at 3:00 pm

August 4 at 10:00 am or 2:00 pm

August 6 at 10:00 am

Thanks,

Alisha Holland

Courtroom Deputy Clerk to the

Honorable Steven D. Grimberg

1767 United States Courthouse

75 Ted Turner Drive, S.W.

Atlanta, GA 30303

Phone: (404) 215-1474

Alisha.Holland@gand.uscourts.gov

From: Bryan Sells <bryan@bryansellslaw.com>

Sent: Monday, August 2, 2021 3:03 PM

To: Alisha Holland <Alisha.Holland@gand.uscourts.gov>

Cc: Bryan Tyson <btyson@taylorenglish.com>; Bryan Jacoutot <bjacoutot@taylorenglish.com>; Loree Anne Paradise <lparadise@taylorenglish.com>; Charlene McGowan <CMcGowan@law.ga.gov>; Nicolas Martinez <nicolas.martinez@bartlitbeck.com>; Wesley Morrissette <wesley.morrissette@bartlitbeck.com>

Subject: Rose v. Raffensperger - 20-cv-2921 - request for conference

CAUTION - EXTERNAL:

Ms. Holland:

In accordance with Judge Grimberg's standing order, I am writing on behalf of the plaintiffs to request a conference with the judge for the purpose of attempting to resolve a discovery dispute.

The dispute centers on Fitz Johnson, who was appointed by Governor Kemp to fill a vacancy on Georgia's Public Service Commission on July 21, 2021. Our complaint alleges that African-Americans have been excluded from the appointments process (ECF 1 ¶ 29), and the Secretary identified Johnson's appointment as a material fact (ECF 85-2 ¶ 11).

Because the appointment happened after the close of discovery, we have not had an opportunity to depose Mr. Johnson. We would like to depose him and a representative of the Governor's office about the appointment. We think that the depositions would be very short (perhaps as little as an hour) and could be conducted by videoconference.

We conferred with counsel for the Secretary, who indicated that the Secretary will oppose our effort to conduct these depositions, which we believe require court approval because they would come after the close of discovery. Their position, as I understand it, is that the Court can take judicial notice of the appointment and that the appointment process is not relevant. We disagree, of course, because of the allegation concerning appointments in our complaint, which relates to the fourth Senate Factor.

We would appreciate a conference with the Court at Judge Grimberg's convenience to resolve this matter in an efficient and expeditious matter.

BRYAN

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